

RESOLUTION NO 75362

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE
APPROVING IMPLEMENTATION OF THE TERMS CONTAINED
IN THE CITY'S LAST, BEST, AND FINAL OFFER TO THE
ASSOCIATION OF BUILDING, MECHANICAL AND ELECTRICAL
INSPECTORS, EFFECTIVE JUNE 27, 2010**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE:

1. That the implementation of the City of San José's Last, Best and Final Offer to the Association of Building, Mechanical and Electrical Inspectors is hereby approved. The City Manager is hereby authorized to implement the City of San José's Last, Best and Final Offer to the Association of Building, Mechanical and Electrical Inspectors, effective June 27, 2010.
2. The terms of the City of San José's Last, Best and Final Offer to the Association of Building, Mechanical and Electrical Inspectors are set out and described in the memorandum to the Mayor and City Council from the Director of Employee Relations, dated April 13, 2010, attached hereto as Attachment A, and incorporated in this Resolution.

ADOPTED this 27th day of April, 2010, by the following vote:

AYES: CHIRCO, CONSTANT, HERRERA, LICCARDO,
OLIVERIO, PYLE; REED.

NOES: CAMPOS, CHU, KALRA, NGUYEN.

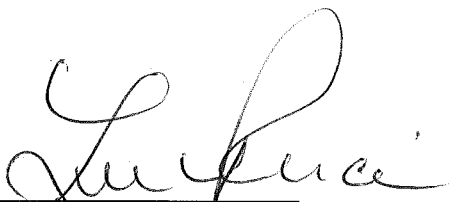
ABSENT: NONE.

DISQUALIFIED: NONE.



CHUCK REED
Mayor

ATTEST:



LEE PRICE, MMC
City Clerk

COUNCIL AGENDA: 04/27/10

ITEM: 3.2



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Alex Gurza

SUBJECT: SEE BELOW

DATE: April 13, 2010

Approved

Date

4/13/10

SUBJECT: APPROVAL OF IMPLEMENTATION OF TERMS CONTAINED IN THE CITY'S LAST, BEST AND FINAL OFFER TO THE ASSOCIATION OF BUILDING, MECHANICAL AND ELECTRICAL INSPECTORS (ABMEI)

COUNCIL DISTRICT: N/A

SNI AREA: N/A

RECOMMENDATION

Adoption of a resolution approving the implementation of the terms of the City's Last, Best and Final Offer for employees represented by the Association of Building, Mechanical and Electrical Inspectors (ABMEI), effective June 27, 2010.

OUTCOME

Adoption of the resolution and authorization to implement the terms contained in the City's Last, Best and Final Offer for employees represented by ABMEI, effective June 27, 2010. Implementation of terms does not result in implementation of a Memorandum of Agreement (MOA).

BACKGROUND

In November 2009, the City Council in open session approved a goal of reducing the total ongoing employee compensation by 5%. The City of San Jose had a labor contract with the Association of Building, Mechanical and Electrical Inspectors (ABMEI), which expired December 10, 2009, making ABMEI's the first contract to open for successor agreement negotiations after the goal was established.

ABMEI currently represents approximately 50 full time positions. This unit includes employees such as Building Inspectors and Supervising Building Inspectors.

The City and ABMEI have been in negotiations for a successor agreement since November of 2009, and have met approximately 17 times. The parties reached impasse on January 5, 2010, and began the impasse procedures under Employee-Employer Relations Resolution No. 39367,

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which is engaging in mediation. The parties engaged in the mediation process over the course of three days, ending February 10, 2010. Unfortunately, the parties were unable to reach agreement.

The City provided ABMEI with its Last, Best and Final Offer on March 8, 2010, which is attached.

Despite the dedication and of time and effort into these negotiations, the City and ABMEI were unable to reach agreement. Pursuant to the Meyers-Milias-Brown Act under California Government Code Section 3505.4, if after meeting and conferring in good faith, an impasse has been reached between the public agency and the recognized employee organization, and impasse procedures, where applicable, have been exhausted, a public agency that is not required to proceed to interest arbitration may implement its last, best and final offer, but shall not implement a memorandum of understanding.

ABMEI informed the City on April 1, 2010, that its membership has rejected the City's Last, Best and Final Offer. ABMEI has been notified that this item was being placed on the Council Agenda for implementation of the terms contained in the City's Last, Best and Final Offer for employees represented by ABMEI.

ANALYSIS

The following is a summary of the terms contained in the City's Last, Best and Final Offer that would be implemented for employees represented by ABMEI:

Wages	Reduce current base pay by approximately 4.65% effective June 27, 2010.
Freezing of Step/Merit Increases	Each year, employees who are not already at top step are eligible to receive a 5.00% step increase during each fiscal year until the employee reaches top step. Effective June 27, 2010, all ABMEI represented employees will have step and merit increases frozen for 26 pay periods. After 26 pay periods, employees represented by ABMEI will become eligible for step increases upon completion of an additional 2080 seniority hours after the date they did not receive a step increase for which they were previously eligible.
Healthcare Cost Sharing	<p>Currently, the City pays ninety (90%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee pays ten (10%).</p> <p>Effective June 27, 2010, the City will pay eighty five percent (85%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay fifteen (15%) of the premium for the lowest priced plan for employee or employee and dependent coverage.</p>

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**Healthcare
HMO Plan Design** The current HMO Plan Design provides for \$10 office visit co-pay, \$5 generic and \$10 brand name prescription co-pays, and a \$50 emergency room co-pay.

Effective July 1, 2010, co-pays for all available HMO plans shall be as follows:

- a. \$25 office visit co-pay
- b. \$10 generic/\$25 brand name prescription co-pay
- c. \$100 emergency room co-pay
- d. \$100 inpatient/outpatient procedure co-pay

**Healthcare
Dual Coverage** Effective July 1, 2010, employees may no longer be simultaneously covered by City-provided medical and/or dental benefits as a City employee and as a dependent of another City employee.

**Healthcare
Payment-In-Lieu** Currently, employees who have other health and/or dental coverage are eligible for a health-in-lieu and/or dental-in-lieu amount of 50% of the City's premium. This results in a formula that increases as the City's costs towards healthcare increases. The current in-lieu amounts are as follows:

	<u>Health In-Lieu</u>	<u>Dental In-Lieu</u>
If eligible for family coverage:	250.31	24.44
If NOT eligible for family coverage:	100.54	24.44

Effective June 27, 2010, employees who qualify for and participate in payment-in-lieu of health and/or dental insurance program will receive the following per pay period:

	<u>Health In-Lieu</u>	<u>Dental In-Lieu</u>
If eligible for family coverage:	221.84	19.95
If NOT eligible for family coverage:	89.09	19.95

A City employee who receives healthcare coverage as a dependent of another City employee shall be deemed NOT eligible for family coverage.

This changes the current formula from a percentage to a fixed dollar amount and will reduce the increases in the health in-lieu program in the future.

**Disability Leave
Supplement** Reduce maximum supplemental pay benefit from nine (9) calendar months (1560 hours) to six (6) calendar months (1040 hours).

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- Sick leave Payout** Effective June 27, 2010, modify calculation of payout from a maximum of 75% of final hourly rate for accruals between 800 and 1200 hours, to a maximum of 60% of final hourly rate for accruals between 400 and 1200 hours for current employees. Distribution of payouts for employees who retire before June 27, 2010, shall be made no later than February 1, 2011. For employees hired on or after June 28, 2010, modify calculation of payout to a maximum of 750 hours at 25% of final hourly rate. Employees who do not retire directly from active City service will no longer be eligible for this benefit.
- Retirement Cost Mitigation** ABMEI shall commence meeting and conferring on retiree healthcare benefits for future employees, a medical reimbursement program for future retirees, and pension benefit/costs for current and future employees within 15 calendar days after the City provides notification to ABMEI.
- Overtime** Employees who work in excess of 40 hours per work week shall be compensated at the rate of time and one-half (1.5) the employee's hourly rate.
- Side Letter Agreements** The Reduced Work Week side letter will expire June 27, 2010. All other side letters expired with the expiration of the 2007-2009 MOA on December 10, 2009.

EVALUATION AND FOLLOW-UP

Staff does not anticipate any follow-up actions necessary at this time.

PUBLIC OUTREACH/INTEREST

- ☐ **Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. (Required: Website Posting)
- ☒ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. (Required: E-mail and Website Posting)
- ☐ **Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. (Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)

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This item meets Criterion 2. This memorandum will be posted on the City's website for the April 27, 2010, Council Agenda.

COORDINATION

This memorandum was coordinated with the City Attorney's Office and the City Manager's Budget Office.

COST IMPLICATIONS

These terms meet the goal of a 5% ongoing total compensation reduction. The implementation of these terms will reduce the total compensation for employees represented by the Association of Building, Mechanical and Electrical Inspectors (ABMEI). The calculated savings to the City of approximately \$362,000 in all funds and approximately \$290,000 in the General Fund are based upon the 2010/2011 Base Budget. These savings do not assume reductions in positions represented by ABMEI and the associated loss of overhead to the General Fund that will likely be included as part of the proposed budget process. The budgetary savings will be assumed in the 2010-2011 Proposed Operating Budget scheduled for release on May 3, 2010. Because all of these General Fund savings are in the Development Fee Program, the savings must stay within the Development Fee Program. These savings do not include the currently unknown cost increases for healthcare or the increased retirement contributions for active employees in Fiscal Year 2010-2011.



Alex Gurza
Director of Employee Relations

For questions please contact Alex Gurza, Director of Employee Relations, at (408) 535-8150.

Attachments

**2009 CITY OF SAN JOSE - ABMEI NEGOTIATIONS
LAST, BEST AND FINAL OFFER**

PERIOD OF MEMORANDUM OF AGREEMENT

Term: Effective beginning the first full payperiod following ratification by the ABMEI Membership and approval by the City Council, expiring on November 13, 2010.

PAY

See Attached (City Proposal #24)

FREEZING STEP INCREASES

See Attached (City Proposal #21)

HEALTH INSURANCE- COST SHARING

See Attached (City Proposal #10)

HEALTH INSURANCE- HMO PLAN DESIGN

See Attached (City Proposal #11)

HEALTH INSURANCE- DUAL COVERAGE

See Attached (City Proposal #20)

HEALTH INSURANCE- HEALTH IN LIEU

See Attached (City Proposal #12)

DISABILITY LEAVE SUPPLEMENT

See Attached (City Proposal #19)

SICK LEAVE PAYOUT

See Attached (City Proposal #13)

RETIREMENT COST MITIGATION

See Attached (City Proposal #22)

OVERTIME- 40 HOURS

See Attached (City Proposal #5)

**2009 CITY OF SAN JOSE - ABMEI NEGOTIATIONS
LAST, BEST AND FINAL OFFER**

ALL TENTATIVE AGREEMENTS

- Housekeeping
- Sick Leave

Note: The following side letters expired on December 10, 2009, and were not renewed:

- Training
- Dispatcher Assignment
- Disciplinary Appeals Pilot Program

2009 CITY OF SAN JOSE – ABMEI NEGOTIATIONS

CITY PROPOSAL #24- PAY**5.1 Salary Ranges**

5.1.1 Effective ~~December 16, 2007~~ June 27, 2010, all salary ranges for employees holding positions in classifications assigned to ABMEI (Union Code 03/031) shall be ~~increased~~ decreased by approximately ~~3.00~~ 4.65%.

5.1.1.1 ~~Effective February 15, 2008, fulltime employees who were employed in ABMEI represented positions on October 19, 2007, employed in ABMEI represented positions on December 11, 2007, and were still employed by the City January 13, 2008, shall receive a one time payment of \$600.~~

5.1.2 ~~Effective December 14, 2008, all salary ranges for employees holding positions in classifications assigned to ABMEI (Union Code 03/031) shall be increased by approximately 3.75%.~~

2009 CITY OF SAN JOSE - ABMEI NEGOTIATIONS

CITY PROPOSAL #21- FREEZING STEP AND MERIT INCREASES

Effective June 27, 2010, all ABMEI represented employees will have step and merit increases frozen for 26 payperiods. After 26 payperiods, employees represented by ABMEI will become eligible for step increases upon completion of an additional 2080 seniority hours after the date they did not receive a step increase for which they were previously eligible.

2009 CITY OF SAN JOSE – ABMEI NEGOTIATIONS**CITY PROPOSAL #10- HEALTHCARE COST SHARING FORMULA****5.3 Health Insurance**

The City will provide health coverage for eligible full-time employees and their dependents in accordance with one of the available plans. ~~The City will pay ninety percent (90%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay ten percent (10%) of the premium for the lowest priced plan for employee or for employee and dependent coverage, up to a maximum of one hundred dollars (\$100) per month. If the employee's 10% contribution for the lowest priced plan exceeds one hundred dollars (\$100) per month, the City shall pay the difference. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan for employee or for employee and dependent coverage.~~

~~Effective at the beginning of pay period one (1) of payroll calendar year 2008, t~~The City will pay ninety percent (90%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay ten percent (10%) of the premium for the lowest priced plan for employee or for employee and dependent coverage. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan for employee or for employee and dependent coverage.

Effective June 27, 2010, the City will pay eighty five percent (85%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay fifteen percent (15%) of the premium for the lowest priced plan for employee or for employee and dependent coverage. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan for employee or for employee and dependent coverage.

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CITY PROPOSAL #11- HEALTHCARE HMO PLAN DESIGN**5.3 Health Insurance**

Effective January 1, 2008, co-pays for all available HMO plans shall be as follows:

- a. Office Visit Co-pay shall be increased to \$10.
- b. Prescription Co-pay shall be increased to \$5 for generic and \$10 for brand name. (The Blue Shield HMO will continue to include \$15 non-formulary drug co-pay.)
- c. Emergency Room Co-pay shall be increased to \$50.

Effective July 1, 2010, co-pays for all available HMO plans shall be as follows:

- a. Office Visit Co-pay shall be increased to \$25.
- b. Prescription Co-pay shall be increased to \$10 for generic and \$25 for brand name.
- c. Emergency Room Co-pay shall be increased to \$100.
- d. Inpatient/Outpatient Procedure Co-pay shall be increased to \$100

2009 CITY OF SAN JOSE – ABMEI NEGOTIATIONS

CITY PROPOSAL #20- HEALTHCARE DUAL COVERAGE**5.3 Health Insurance**

5.3.1 An employee may not be simultaneously covered by City-provided medical benefits as a City employee and as a dependent of another City employee.

5.4 Dental Insurance

5.4.1 An employee may not be simultaneously covered by City-provided dental benefits as a City employee and as a dependent of another City employee.

2009 CITY OF SAN JOSE – ABMEI NEGOTIATIONS

CITY PROPOSAL #12- HEALTHCARE- HEALTH IN LIEU

5.5 Payment-in-Lieu of Health and Dental Insurance

5.5.1 The purpose of the payment-in-lieu of health and/or dental insurance program is to allow employees who have double health and/or dental insurance coverage to drop the City's insurance and receive a payment-in-lieu.

5.5.2 Employees who qualify for and participate in the payment-in-lieu of health and/or dental insurance program will receive 50% of the City's contribution toward their health and/or dental insurance at the lowest cost single or family plan if the employee is eligible for family coverage. The City will retain the remaining 50% of that contribution.

5.5.3 Effective June 27, 2010, employees who qualify for and participate in the payment-in-lieu of health and/or dental insurance program will receive the following per payperiod:

	Health In-Lieu	Dental In-Lieu
If eligible for family coverage:	221.84	19.95
If NOT eligible for family coverage:	89.09	19.95

5.5.4 A City employee who receives healthcare coverage as a dependent of another City employee shall be deemed not eligible for family coverage.

5.5.35 The payment-in-lieu of health and/or dental insurance program is available to full-time employees who are not on a reduced workweek or unpaid leave and have alternate group health and/or dental coverage. To qualify, an employee must provide proof of alternate group coverage to Human Resources. Alternate coverage must be acceptable by the City.

5.5.46 Enrollment in the payment-in-lieu of health and/or dental insurance program can only be done during the first 30 days of employment, during the annual open enrollment period, or within 30 days of a qualifying event (defined in the Human Resources Benefits Handbook as a change in marital, dependent or work status of the employee or the employee's spouse) occurring anytime during the year. Employees who miss the 30-day time limit after a qualifying event must wait until the next open enrollment period to enroll in the payment-in-lieu of insurance program. Enrollment in the payment-in-lieu of insurance program may be canceled by the employee only during the annual open enrollment period unless the employee loses alternate group coverage. Enrollment or cancellation during the open enrollment period will become effective the first pay period of the following calendar year.

5.5.57 Payments for the in-lieu insurance program will be discontinued if an employee becomes ineligible for the program. An employee's ineligible status would include but not be limited to the following situations: employment status changes from full to part time, employee is on an unpaid leave of absence, employee is on a reduced work week, or employee loses or does not have alternate insurance coverage. An employee whose in-lieu payments are discontinued may enroll, if eligible, in a health and/or dental plan during the next annual open enrollment period.

2009 CITY OF SAN JOSE – ABMEI NEGOTIATIONS

5.5.68 If an employee loses alternate coverage, the employee may enroll in a City health and/or dental plan outside of the open enrollment period. To be eligible, the employee must provide verification that alternate coverage has been lost.

5.5.68.1 Health Insurance. To enroll in a City health insurance plan following loss of alternate coverage, the employee must pay all unpaid premiums (City and employee contributions) and refund any excess in-lieu payments required to make the coverage effective on the date when alternate coverage ceased. Re-enrollment in the plan shall be in accordance with the carriers' enrollment procedures.

5.5.68.2 Dental Insurance. Enrollment in a City dental insurance plan following loss of alternate coverage will become effective the first of the month following payment of two dental premiums through the City's payroll process. Re-enrollment in the dental insurance plan shall not be retroactive.

2009 CITY OF SAN JOSE – ABMEI NEGOTIATIONS

CITY PROPOSAL #19- DISABILITY LEAVE SUPPLEMENT

ARTICLE 19 DISABILITY LEAVE

19.1 Disability Leave. Disability Leave Supplement (DLS) is the benefit provided pursuant to this Article, which, when added to Workers' Compensation Temporary Disability (WCTD) results in providing employees 85% of their regular base salary.

19.2 Eligibility for Disability Leave Supplement. A full-time employee required to be absent from work due to a job-related injury or industrial illness who receives WCTD payments pursuant to Division 1 or Division 4 of the California Labor Code is eligible for DLS, excluding ineligible causes listed in section 19.4. In the event an employee is not eligible for WCTD payments because of the statutory waiting period, DLS shall not be paid for such a waiting period. The employee may use sick leave to cover the waiting period.

19.2.1 After the initial three day waiting period has been met, and the employee otherwise qualifies for DLS, the employee may utilize DLS for absences required for medical visits related to the injury after his/her return to work if he/she is unable to schedule such visits on non-work hours. DLS for such intermittent absences is subject to authorization by the Workers' Compensation Section. In no event may DLS exceed the limit specified in 19.6.

19.3 Eligibility for Disability Leave Supplement Linked to Temporary Disability. If the Worker's Compensation Appeals Board of the State of California or any judicial court should determine that the employee is not entitled to Temporary Disability (WCTD) compensation, the employee shall not be entitled to Disability Leave Supplement (DLS) benefits. Under such circumstances, any DLS moneys paid to the employee by the City must be returned to the City within one year.

19.4 Ineligible Causes for Disability Leave. An employee shall not be eligible for disability leave, and shall not receive DLS if the injury or illness that causes the absence results from an act of gross negligence of such employee and/or any work voluntarily undertaken by employee from which he has been prohibited from engaging in as determined by a City physician, prior to the date of injury.

19.5 Ineligibility if Offer and Decline of Temporary Modified Duty. ~~DLS shall not be provided~~ An employee shall be voluntarily separated from City service if the City offers the employee employment temporary modified duty at identical or similar salary, within the employee's medical limitations, and the employee refuses or fails to accept duty for which the employee is physically qualified.

19.6 Maximum Term of Disability Leave Supplement. The employee will receive DLS benefits equal to the amount of money which, when added to the WCTD equals 85% of what the employee would have earned at the position from which the employee is disabled for one of the following time periods, whichever is shortest:

1. The time the employee is medically required to be absent due to a work-related injury or illness, after the required 3-day waiting period.
2. The period of time WCTD is payable to the employee under the Workers' Compensation provisions of Division 1 or Division 4 of the Labor Code of the State of California.

2009 CITY OF SAN JOSE – ABMEI NEGOTIATIONS

3. ~~Nine Six (96)~~ calendar months (~~274 days or 1560~~ 1040 hours if not continually absent) following the date of injury.

19.6.1 Time Limit for DLS Eligibility. After ~~1560~~ 1040 hours of DLS, the employee is entitled to no additional compensation for the injury or illness. No employee shall be eligible for DLS 5 years after the date of the onset of the injury or illness for which the employee is claiming DLS.

- 19.7 Disability Leave Supplement is in Lieu of Regular Compensation. Employees who receive WCTD and DLS compensation do not receive their regular salary. DLS as described in this Article is in lieu of regular compensation.

- 19.8 Requirement of Evidence Proving Temporary Disability. The Director of Human Resources, or designee, is responsible for determining eligibility for DLS. In making this determination, the Director may require the employee to provide proof of injury or illness, proof that the injury or illness will last, and proof of other relevant matters as determined by the Director, or designee. The Director, or designee, may require the employee to submit to a medical examination by a physician selected by the City.

- 19.9 Termination of Disability Leave. An employee who is unable to return to full time regular duty following the expiration of any and all leave provided in this Article and the integration of Sick Leave as provided in Article 18.1.3.1, and of accrued vacation, and compensatory time off, with Workers' Compensation may be considered to have separated from City service.

- 19.9.1 An employee who exhausts all Disability Leave shall be notified that they are subject to the above provision upon expiration of all remaining paid leave.

2009 CITY OF SAN JOSE – ABMEI NEGOTIATIONS

CITY PROPOSAL #13- SICK LEAVE PAYOUT

18.2 Sick leave payoff shall be given to each full-time employee at the time of retirement or death under one of the following conditions:

18.2.1 Federated Retirement Plan:

The employee is:

- 18.2.1.1 A member of the Federated Retirement Plan, and
- 18.2.1.2 Retired under the provisions cited in the plan, and
- 18.2.1.3 Credited with at least fifteen (15) years of service in this retirement plan, or
- 18.2.1.4 Credited with at least ten (10) years of service prior to a disability retirement.

~~18.2.2 Terminated Employee with Vesting Rights~~

~~The employee has:~~

- ~~18.2.2.1 Terminated service with the City, and~~
- ~~18.2.2.2 Retained vesting rights in a retirement system according to provisions in the SJMC, and~~
- ~~18.2.2.3 Following such termination, qualifies for retirement and retires under the provisions cited in the code and~~
- ~~18.2.2.4 Has at the time of retirement credit for at least fifteen (15) years of service in the applicable retirement plan.~~

18.2.3 Death During Service

The estate of any full-time employee who dies while in City service and prior to retirement, even though the employee is not credited with at least fifteen (15) years of service in any applicable retirement plan.

~~18.2.4 Death of Terminated Employee~~

~~The estate of any full-time employee who:~~

- ~~18.2.4.1 Had terminated service with the City but had retained vesting rights in a retirement system according to provisions in the SJMC, and~~
- ~~18.2.4.2 Dies prior to becoming eligible for retirement allowances as cited under provisions of the SJMC, and~~
- ~~18.2.4.3 Has at the time of death credit for at least fifteen (15) years of service in the~~

2009 CITY OF SAN JOSE – ABMEI NEGOTIATIONS

applicable retirement plan.

18.3 Payout shall be determined as follows:

18.3.1 If an eligible full-time employee, as defined in subsection 18.2 above, at the time of their retirement or death has earned, unused sick leave hours, the employee shall be paid the equivalent of a specified percent of their hourly rate of pay at the time of retirement, termination or death, whichever comes first, multiplied by the total number of the employee's accumulated and unused hours of sick leave as of the date of the employee's retirement or death in accordance with the 18.3.1.1.

18.3.1.1	Less than 400 hours:	Hours accumulated x 50% of final hourly rate
	400 - 799 hours:	Hours accumulated x 60% of final hourly rate
	800 - 1200 hours:	Hours accumulated x 75% of final hourly rate

18.3.1.2 Distribution of payouts to eligible employees, in accordance with 18.3.1 above, who retire before June 27, 2010, shall be made no later than February 1, 2011.

18.3.2 Effective June 27, 2010, if an eligible full-time employee, as defined in subsection 18.2 above, at the time of their retirement or death has earned, unused sick leave hours, the employee shall be paid the equivalent of a specified percent of their hourly rate of pay at the time of retirement or death, whichever comes first, multiplied by the total number of the employee's accumulated and unused hours of sick leave as of the date of the employee's retirement or death in accordance with 18.3.2.1.

18.3.2.1	Less than 400 hours:	Hours accumulated x 50% of final hourly rate
	400 - 799-1200 hours:	Hours accumulated x 60% of final hourly rate
	800 - 1200 hours:	Hours accumulated x 75% of final hourly rate

18.3.3 Employees hired by the City on or after June 28, 2010, if an eligible full-time employee, as defined in subsection 18.2 above, at the time of their retirement or death has earned, unused sick leave hours, the employee shall be paid the equivalent of a specified percent of their hourly rate of pay at the time of retirement or death, whichever comes first, multiplied by the total number of the employee's accumulated and unused hours of sick leave as of the date of the employee's retirement or death in accordance with 18.3.3.1.

18.3.3.1 0 – 750 hours: Hours accumulated x 25% of final hourly rate

18.4 Employees are only eligible for one sick leave payout while employed by the City of San Jose, including breaks in employment.

2009 CITY OF SAN JOSE – ABMEI NEGOTIATIONS

CITY PROPOSAL #22- RETIREMENT COST MITIGATION

ARTICLE 9 FULL UNDERSTANDING, MODIFICATION AND WAIVER

- 9.1 This Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any and all prior or existing Memoranda of Understanding, understandings and agreements, whether formal or informal, are hereby superseded and terminated in their entirety.
- 9.2 Existing benefits provided by ordinance or resolution of the City Council or as provided in the San Jose Municipal Code and which are referenced in the Agreement shall be provided in accordance with the terms of the Agreement.
- 9.3 It is the intent of the parties that ordinances, resolutions, rules and regulations enacted pursuant to this Memorandum of Agreement be administered and observed in good faith.
- 9.4 Although nothing in this Agreement shall preclude the parties from mutually agreeing to meet and confer on any subject within the scope of representation during the term of this Agreement, it is understood and agreed that neither party may require the other party to meet and confer on any subject matter covered herein or with respect to any other matter within the scope of representation during the term of this Agreement.

~~9.5 Notwithstanding the provisions of Article 9.4 and Article 24, the City may notify the Organization in writing once during the term of this 2007 – 2009 Agreement of its desire to reopen negotiations regarding retiree healthcare benefits. Upon such notice being given, the duly authorized representatives of the parties shall meet and confer in good faith in an effort to reach a mutual agreement with respect to retiree healthcare benefits. If no agreement is reached, the parties will follow the impasse procedures set forth in the City of San Jose's Employer-Employee Relations Resolution (#39367) and the Meyers Millias-Brown Act. The parties understand that this means that, notwithstanding any other provision of this agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures. The parties also agree that, after declaration of impasse with respect to negotiations over a modification of retiree healthcare benefits, if the City provides notification of implementation, the Organization has the right to engage in a strike, or such other protected concerted activities on the employees' own time provided such other protected concerted activities do not impede the performance of the employees' assigned duties. Protected concerted activities shall not include partial strikes (such as refusing to work overtime, engaging in a slowdown or accepting some work tasks and refusing to perform others), intermittent strikes and sit-down strikes.~~

9.5 Retirement Benefits Reopener/Cost Mitigation.

9.5.1 Notwithstanding any other provision of this Agreement, the parties agree to commence meeting and conferring between January 1, 2010, and January 19, 2010, within fifteen (15) calendar days of the City providing written notice to ABMEI on retiree healthcare benefits for future employees, and a medical reimbursement program for future retirees, and pension benefit/costs for current and future employees.

9.5.2 The parties intend to engage in the foregoing negotiations in a coalition bargaining process with all other interested represented bargaining units, if any. However, negotiations between the City and Employee Organization shall commence no later than fifteen (15) calendar days after the City provides written notice to ABMEI January 19, 2010, with or without participation of any

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other bargaining unit. The City and Employee Organization shall negotiate in good faith in an effort to reach a mutual agreement.

- 9.5.3 If no agreement is reached, the parties will follow the impasse procedures set forth in the City of San Jose's Employer-Employee Relations Resolution (#39367) and the Meyers-Milias-Brown Act. The parties understand that this means that, notwithstanding any other provision of this agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures. The parties also agree that, after declaration of impasse with respect to negotiations over a modification of retiree healthcare and pension benefits, if the City provides notification of implementation, the Organization has the right to engage in a strike, or such other protected concerted activities on the employees' own time provided such other protected concerted activities do not impede the performance of the employees' assigned duties. Protected concerted activities shall not include partial strikes (such as refusing to work overtime, engaging in a slowdown or accepting some work tasks and refusing to perform others), intermittent strikes and sit-down strikes. The City agrees that a unilateral implementation of retiree healthcare and/or pension benefits shall not be effective before July 1, 2010.

ARTICLE 25 RETIREE HEALTHCARE FUNDING

- 25.1 The City and the Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to pre-funding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization). Amortization of changes in the unfunded retiree healthcare liability other than the initial retiree healthcare liability (e.g. gains, losses, changes in actuarial assumptions, etc.) shall be determined by the Plan's actuary. The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. When determining the contribution rates for the Plan, the Plan actuary shall continue to use the Entry Age Normal (EAN) actuarial cost method and a discount rate consistent with the pre-funding policy for the Plan as outlined in this Article.
- 25.2 The City and the Employee Organization further agree that the Municipal Code and/or applicable plan documents shall be amended in accordance with the above agreement and that the Employee Organization will support such amendments.
- 25.3 It is understood that in reaching this agreement, the parties have been informed by cost estimates prepared by the Federated City Employees' Retirement System Board's actuary and that the actual contribution rates to reach full pre-funding of retiree healthcare will differ. The phase-in to the ARC shall be divided into five steps (using a straight line method), each to be effective on the first pay period of the City's fiscal year in each succeeding year. The first increment of the phase-in shall be effective on June 28, 2009. It is understood that because of changes resulting from future actuarial valuations, the amount of each increase may vary upward or downward. The City and Employee Organization agree that the Plan member cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year and the City cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year. For example, if the

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members' contribution rate is 4% of pensionable pay, the subsequent fiscal year's contribution rate for retiree healthcare cannot exceed 4.75% of pensionable pay. Notwithstanding the limitations on the incremental increases, by the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code.

- | 25.4 The City will establish a qualified trust ("Trust") ~~before June 27, 2010~~. Until such time as a Trust is established, the City and employee contributions under this agreement shall be made into the existing Medical Benefits Account for as long the contributions can be made into the Medical Benefits Account in accordance with IRS limitations. If the Trust is not established prior to reaching the IRS limitation, the parties agree to meet and discuss alternative funding vehicles.
- 25.5 It is the objective of the parties that the Trust created pursuant to this agreement shall become the sole funding vehicle for Federated retiree healthcare benefits, subject to any legal restrictions under the current plan, or other applicable law.

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CITY PROPOSAL #5- CALCULATION AND ELIGIBILITY FOR OVERTIME

6.6 An employee authorized or required to work overtime who works in excess of eight (8) hours per day, or ~~ten (10) hours per day if assigned to a work schedule of four (4) ten (10) hour work days, or in excess of forty (40) hours per work week~~, shall be compensated at the rate of time and one-half (1-1/2) the employee's hourly rate, except when such excess hours result from a change in such employee's work week or shift or from the requirement that such employee fulfill his/her work week requirement.

6.6.1 Notwithstanding 6.6 above, any employee who works in excess of twelve consecutive hours shall be compensated at the rate of two (2) times the employee's hourly rate for all hours worked in excess of twelve (12) consecutive hours.

6.6.2 For overtime work, volunteers will be asked for first, whenever possible.